(4)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR

W.P. No. 5046 **Of 98**

Petitioner : Nanhuram

Vs.

Respondents : Teerathraj Singh and others

PETITION UNDER ARTICLES 226/227 OF CONSTITUTION OF INDIA

1. **Particulars of Petitioner**

Nanhuram, son of Govindo, r/o Shankerpali, Tahsil Dabara, Distt. Bilaspur.

2. **Particulars of respondents**

1) Teerath raj Singh, S/o Chandrabhan Singh Gond, R/o village Barekelkhurd, Tahsil Mahasamund, Distt. Mahasamund.

2) Usatram, son of Bodhram, R/o village Barekelkhurd, Tahsil & Distt. Mahasamund.

3) Gurubaru, S/o Sahdev, R/o Barekelkhurd, Tahsil & Distt. Mahasamund.

4) S.D.O., Mahasamund.

5) Collector, Raipur.

6) Add. Commissioner, Raipur Division, Raipur.

7) Board Of Revenue, Gwalior.

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HIGH COURT OF CHHATTISGARH AT BILASPUR

S.B: Hon'ble Shri Prashant Kumar Mishra, J.

Writ Petition No. 5046/98

PETITIONER : **Nanhuram**

Versus

RESPONDENTS : **Teerathraj Singh and others**

None for the parties.

ORAL ORDER
(31.08.2012)

The present writ petition has been preferred by the purchaser of land bearing khasra No. 28/2 and 83/2 area 2 acres by registered sale deed dated 29/09/1980 from Teerathraj Singh. On an application moved by the said Teerathraj Singh before the S.D.O. (Revenue), Mahasamund under the provisions contained in Section 170-B of Chhattisgarh Land Revenue Code proceedings were initiated by the said revenue officer and after issuing notice, obtaining reply and holding enquiry in the matter the land was reverted to the original owner Teerathraj Singh by order dated 15/09/1992. In the said order it was found by the S.D.O. that spot inspection was carried out by village Kotwar and village Patel who submitted a report that on the land recorded in the name of Nanhuram one Usatram Agariya is in cultivating possession and that no person in the name of Nanhuram is residing in the village. Teerathraj Singh made statement that he has never sold the land to Nanhuram and infact he had mortgaged the land in favour of Usatram Agariya. According to him, he had already repaid loan of Rs.3000/- to Usatram Agariya for which a receipt has been has been issued to him. Usatram was examined by the S.D.O., however, Nanhuram in whose favour the sale deed was executed neither filed any reply nor made any statement before the S.D.O. (Revenue).

(2) On the basis of material available on record, the S.D.O. (Revenue) recorded a categorical finding that land was purchased by Usatram as benami transaction in the name of Nanhuram to avoid the rigor of Section 165 (6) of Chhattisgarh Land

Revenue Code and the tribal holder of land has been defrauded, therefore, transaction is declared to be null and void.

(3) The above order of S.D.O. (Revenue), Mahasamund was affirmed in appeal by Collector, Raipur by its order dated 16/05/1994 (Annexure P-7) and thereafter by Additional Commissioner, Raipur Division, Raipur in revision proceedings on 24/01/1996 (Annexure P-8). Second revision was preferred before the Board of Revenue which was dismissed as not maintainable vide Annexure A-9.

(4) No one appears before this court to argue this writ petition, however, since this writ petition was dismissed in default on 8th August, 2007 and thereafter it was restored, this court does not deem it proper to dismiss the writ petition for want of prosecution and has proceeded to decide the matter on merits on the basis of material placed on record.

(5) From what has been concluded by the S.D.O. (Revenue), Mahasamund in its order dated 15/09//1992 (Annexure A-6) it is apparent that the person in whose name land was purchased is neither resident of the village nor has ever cultivated the land and infact in response to the notice issued by the S.D.O. (Revenue) the said Nanhuram did not appear before the S.D.O. to record his statement. It is also to be seen that when the village Kotwar and village Patel made spot inspection the villagers informed them that the land is cultivated by Usatram and not by Nanhuram. The evidence available on record clearly suggests that transaction was benami and was made at the instance of Usatram who had advanced loan of Rs.3000/- to Teerathraj Singh and the transaction was by way of collateral surety for the loan transaction.

(6) In the matter of ***B.K. Muni Raju vs. State of Karnataka (2008) 4 SCC 451***, it has been held in paragraph 22 as under:

> "It is settled law that a writ of certiorari can only be issued in exercise of extraordinary jurisdiction which is different from appellate jurisdiction. The writ jurisdiction extends only to cases where orders are passed by inferior courts or tribunals or authorities in excess of their jurisdiction or as a result of their refusal to exercise jurisdiction vested in them or they act illegally or improperly in the exercise of their jurisdiction causing grave miscarriage of

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justice. In regard to a finding of fact recorded by an inferior tribunal or authority, a writ of certiorari can be issued only if in recording such a finding, the Tribunal/authority has acted on evidence which is legally inadmissible, or has refused to admit an admissible evidence, or if the finding is not supported by any evidence at all, because in such cases the error amounts to an error of law. It is needless to mention that a pure error of fact, however, grave cannot be corrected by a writ."

(7) In view of the above principles laid down by the Supreme Court concerning scope of writ jurisdiction particularly for issuance of writ of certiorari, this court finds that the revenue authorities i.e. S.D.O. (Revenue), Mahasamund, Collector, Raipur and Additional Commissioner, Raipur have concurrently found that the subject transaction is void on account of being a benami transaction for the benefit of Usatram, therefore this court finds itself unable to take a different view of the matter to set aside concurrent finding recorded by the subordinate revenue authorities.

(8) There is no substance in this petition filed under Article 226/227 of Constitution of India, which fails and is hereby dismissed.

Sd/-
Prashant Kumar Mishra
Judge